

THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
CENTERS FOR DISEASE CONTROL AND PREVENTION
NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

convenes the

WORKING GROUP MEETING

ADVISORY BOARD ON
RADIATION AND WORKER HEALTH

CONFLICT OF INTEREST

The verbatim transcript of the Working Group
Meeting of the Advisory Board on Radiation and
Worker Health held telephonically on July 31, 2006.

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TRANSCRIPT LEGEND

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-- "*" denotes a spelling based on phonetics, without reference available.

-- (inaudible)/ (unintelligible) signifies speaker failure, usually failure to use a microphone.

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(By Group, in Alphabetical Order)

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- 2 Senior Operator, Nuclear Fuel Handling
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- GIBSON, Michael H.
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- 3 MELIUS, James Malcom, M.D., Ph.D.
- 4 Director
- 5 New York State Laborers' Health and Safety Trust Fund
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P R O C E E D I N G S

(2:00 p.m.)

WELCOME AND OPENING COMMENTSDR. LEWIS WADE, DFO

1 DR. WADE: This is Lew Wade and I serve as the
2 Designated Federal Official for the Advisory
3 Board. This is a meeting of a working group of
4 the Advisory Board. This particular working
5 group was put together to look very
6 specifically at a draft conflict of interest
7 policy that NIOSH had developed and to consider
8 that policy and bring recommendations for a
9 course of action for the full Board to follow
10 in light of that policy, and that's scheduled
11 for a Board conference call on August the 8th.
12 The Board is -- This -- This working group is
13 chaired by Dr. Melius and is ably staffed by
14 Brad Clawson, Mike Gibson and Dr. Ziemer.

15 I would like to point out in case
16 there's some confusion, there is another
17 working group of the Board also chaired by Dr.
18 Melius that's looking at specific SEC issues,
19 technical issues that arise in the conduct of -
20 - of the Board's work. That working group,

1 also chaired by Dr. Melius, is staffed by Dr.
2 Lockey, Ms. Munn and Mark Griffon. That is not
3 the working group that -- that we're involved
4 with here. We'll hold this meeting open to the
5 public. What I would ask now is if there are
6 any other Board members on the call other than
7 the -- Melius, Clawson, Gibson and Ziemer, I
8 need you to identify yourselves. We have to be
9 sure that we do not have a quorum of the Board
10 as we conduct these deliberations. Are there
11 any other Board members present?

12 (No response)

13 **DR. WADE:** Okay. I would ask, for the record,
14 if there are federal employees who are on this
15 call in an official capacity, would you
16 identify yourselves?

17 **MS. HOWELL:** This is Emily Howell with HHS.

18 **DR. WADE:** Thank you, Emily.

19 **MR. SAMPSON:** This is Bob Sampson from GAO.

20 **DR. WADE:** Okay. Thank you.

21 **MS. ENGLE:** I'm Meeta Engle, also from GAO.

22 **DR. WADE:** Welcome. Any other federal
23 employees in an official capacity?

24 (No response)

25 **DR. WADE:** There are no other Board members so

1 we don't have a quorum and Jim, it's all yours
2 to -- to proceed with deliberations of the
3 working group.

4 **THE COURT REPORTER:** Dr. Wade, this is Ray.
5 Can I ask one question?

6 **DR. WADE:** Surely.

7 **THE COURT REPORTER:** Could I get the lady's
8 name who was last to ID herself just then from
9 GAO?

10 **MS. ENGLE:** Yes, my name is Meeta, M-E-E-T-A.

11 **THE COURT REPORTER:** Okay.

12 **MS. ENGLE:** E-N-G-L-E.

13 **THE COURT REPORTER:** Okay. Thank you.

14 **MS. ENGLE:** Sure.

15 **DR. WADE:** Okay, Dr. Melius.

16 **NIOSH POLICY, CONFLICT OF INTEREST**

17 **DR. MELIUS:** Okay. We will be referring to the
18 NIOSH Statement of Policy Conflict of Interest,
19 the revised draft that was published as of July
20 18th, 2006. It's available at the NIOSH, the
21 OCAS website. It does significantly differ
22 from the previous draft so we will -- when
23 referring to it, it will be helpful to be
24 looking at it. And those of us that are on the
25 work group also have a -- a draft set of

1 comments that I drafted and circulated to those
2 members for our -- our consideration. We'll be
3 talking -- those are not available on the
4 website since they're -- serve our internal
5 draft so to speak. And hopefully Brad, Mike
6 and Paul, did you receive a copy of those?

7 **DR. ZIEMER:** Yes, I got mine.

8 **MR. GIBSON:** Got it, Jim.

9 **MR. CLAWSON:** I received a copy of this draft.

10 **DR. MELIUS:** Okay. And actually Lew -- I sent
11 a copy to Lew also so he would have a copy.
12 One question I have for you, Lew -- I guess we
13 lost Lew already.

14 **DR. WADE:** No, I'm here.

15 **DR. MELIUS:** Okay. Is on the August 8th call
16 of the -- the Board, will there be an
17 opportunity for public comment on the conflict
18 of interest, the latest draft?

19 **DR. WADE:** We could make that available if you
20 would like.

21 **DR. MELIUS:** Yeah, I mean I think it might be
22 appropriate because if not -- not, I think we're
23 sort of in this position of sort of adopting a
24 draft without -- without the public having had
25 an opportunity to comment on it.

1 **DR. WADE:** Okay. Well, I'll do what I can to -
2 - to make sure that that possibility exists.

3 **DR. MELIUS:** And there again there may not be
4 any; and there's certainly I think an
5 opportunity for direct communication with the -
6 - to NIOSH on -- on this draft policy but in
7 case somebody wanted to speak to it I just
8 think it's sort of awkward to --

9 **DR. ZIEMER:** All right. Just for clarity, I'm
10 not certain that the Board's action would be
11 that of adopting the draft so much as
12 commenting on the draft. Was it --

13 **DR. MELIUS:** Well, yeah, let me -- let me
14 clarify. That's a good point as well.

15 **DR. ZIEMER:** It is -- It will be the NIOSH
16 policy and they've given the opportunity for us
17 to comment and then for public comment as well
18 so there's no action. It's only to the extent
19 that we want to be informed of the public
20 comments with respect to the comments that we
21 might make I would think.

22 **DR. MELIUS:** Yeah. And I would also just point
23 out that -- that NIOSH stated at our last Board
24 meeting that their -- their intent is --
25 they're -- they would like to get this policy

1 implemented --

2 **DR. ZIEMER:** Right.

3 **DR. MELIUS:** -- soon and so I think the -- it
4 was my impression that time was that after the
5 August 8 meeting, after receiving our comments
6 that they would be -- be sort of trying to move
7 forward and implement the policy so I guess
8 that's why I was thinking of it as sort of
9 maybe the last public discussion of the -- of
10 the policy at least until it gets implemented.
11 Somebody has actually called me up and asked me
12 about this issue of public comment and how
13 would that be addressed. So that's why I
14 wanted to --

15 **DR. WADE:** As I said, I'll do what is necessary
16 to -- to make sure that that possibility
17 exists.

18 **DR. MELIUS:** Yeah, I think as long as it's --
19 we have a --

20 **DR. ZIEMER:** We usually have a public comment
21 period so --

22 **DR. MELIUS:** Exactly. We indicate -- that kind
23 of covers that. I don't know how the -- the
24 Board members want to go through this. The --
25 what I tried to do was to reference each of my

1 comments to the section that they ref--
2 referred to, and I've actually got some
3 additional clarifying information that -- that
4 can be added but -- but my plan would be to
5 have something that we would put forward to the
6 group, go to the full Board for review and --
7 and comment.

8 So it may be a place to start off is in
9 terms of spending our time rather than trying
10 to focus on this document word for word would
11 be to look in -- are there additional comments
12 that we would like to make that -- that aren't
13 included here and we can sort of add them; and
14 then maybe go back and -- and say are there any
15 additions or clarifications or objections or
16 whatever to what I've written here. So maybe
17 Paul, Mike or Brad, do you have any additional
18 comments you would like to add, you think we
19 should discuss adding?

20 **DR. ZIEMER:** I have some suggested footnotes
21 but I think they will be in the framework of
22 the -- of your comments so I -- I don't think
23 they would need to be discussed outside that
24 framework. My suggestion would be to just go
25 through your comments. You're asking if

1 there's other issues that you haven't already
2 covered, right?

3 **DR. MELIUS:** Exactly. Brad, do you have any
4 others or --

5 **MR. CLAWSON:** This is Brad. I -- I don't have
6 any right at this time but as we go through it
7 I -- I did have some clarification questions on
8 some of your information. But we'll address
9 those as we get into 'em.

10 **DR. MELIUS:** Okay. Good. And Mike?

11 **MR. GIBSON:** Yeah, same for me.

12 **DR. MELIUS:** Okay. Well, then, let's start by
13 going through and maybe see just paragraph by -
14 - by paragraph that I mean the first part, I
15 thought we should start off by, you know,
16 stating that we, you know, think -- and I think
17 we've talked about this at our meetings, that
18 the Board is supportive of -- of NIOSH's, you
19 know, efforts to clarify and sort of codify
20 their conflict of interest policy and -- and so
21 we should indicate our general support for the
22 changes.

23 **DR. ZIEMER:** I agree with that.

24 **DR. MELIUS:** Yeah. I don't think that -- The
25 first specific comments was to footnote two on

1 page one which addresses the term conflict of
2 interest. And maybe -- and maybe this is
3 semantics but my sense as though it would have
4 been also trying to avoid the -- the appearance
5 of a conflict of interest that sort of a
6 potential conflict of interest has a slightly
7 different connotation to it.

8 **DR. ZIEMER:** Yeah, Jim, when you use the word
9 appearance, that's the -- I think the same as a
10 perceived conflict, right?

11 **DR. MELIUS:** Right.

12 **DR. ZIEMER:** And it appears to somebody or they
13 perceive it to be a conflict. My -- My
14 question is, and I don't know if Lew can answer
15 this or if there's anyone, any NIOSH legal
16 counsel aboard but the -- the appearance or the
17 perceived conflict may be a very subjective
18 thing. It may -- It may be in the eyes of the
19 beholder. It's not necessarily a legal
20 conflict of interest; am I correct on that?

21 **DR. WADE:** We have Emily on the line. Emily,
22 do you want to speak to that?

23 **MS. HOWELL:** Yes. The appearance of a conflict
24 is -- is more of a -- it's not a legal issue.

25 **DR. ZIEMER:** As long -- As long as the legal

1 part, which is the -- the real or potential
2 issues are taken care of it doesn't legally
3 constitute a conflict per se. It --

4 **MS. HOWELL:** Right. Right.

5 **DR. ZIEMER:** There -- There may be one but --
6 but per se it's not a conflict simply 'cause
7 someone perceives it to be.

8 **MS. HOWELL:** Right. We have --

9 **DR. ZIEMER:** You have certain tests as to
10 whether --

11 **MS. HOWELL:** Right.

12 **DR. ZIEMER:** -- it is. Jim, I think as I
13 understand it and I think -- I think NIOSH
14 probably would agree with this, that to the
15 extent possible we do want to avoid perceived
16 conflicts as well as real ones.

17 **DR. MELIUS:** That's correct.

18 **DR. ZIEMER:** I'd say to the extent possible.
19 We want the optics to be as -- as good as you
20 can get 'em.

21 **DR. MELIUS:** Correct. Yeah. And that's the
22 way we've always discussed this really in terms
23 of discussing NIOSH policy. I mean it really
24 digressed to the -- the next comment also but
25 one of the things I found a little bit

1 difficult about this document was that it to
2 some extent assumes that there are these other
3 legal requirements or requirements that address
4 conflict of interest and that this is beyond
5 that. But it never fully states those legal
6 requirements or -- so there are for example the
7 FACA requirements that address the Board and
8 the implementation of -- of FACA so I believe
9 there's some regulations and so forth tied to
10 that.

11 **DR. ZIEMER:** If there are actual conflicts.

12 **DR. MELIUS:** Yeah, that are -- that are actual
13 conflicts. There are some that also address
14 issues with, you know, the contractors and so
15 forth, and that --

16 **DR. ZIEMER:** Well --

17 **DR. MELIUS:** -- requirements. If --

18 **DR. ZIEMER:** -- yeah.

19 **DR. MELIUS:** If NIOSH sort of assumes that
20 those are already in place and this builds on
21 that yet, you know, it never really states
22 those and, you know, it again goes back to what
23 you were saying. It -- It -- It's somewhat -
24 - I've gotten somewhat confusing in -- in terms
25 of trying to understand this document.

1 **DR. WADE:** Jim, this is Lew Wade. We would
2 certainly appreciate a comment like that. I
3 mean I've captured it obviously --

4 **DR. MELIUS:** Yeah.

5 **DR. WADE:** -- but we would appreciate a comment
6 like that coming from the Board.

7 **DR. ZIEMER:** I also have a -- a suggested
8 wording which could be added to the footnote.
9 If you want I would read that and see if it --
10 if it sounds like something you'd want to add.

11 **DR. MELIUS:** Okay. Go ahead.

12 **DR. ZIEMER:** Here's what I jotted down. And --
13 And I think this would be in addition to
14 footnote two. Well, let's see. Maybe it'd
15 just be a part of our comments. Here it is.
16 In some cases there may be an appearance -- I
17 put this in quotes, "appearance of", quote, or
18 a "perceived", in quotes, conflict of interest
19 even where no legal conflict of interest
20 exists. To the extent feasible, NIOSH will
21 also seek to minimize the appearance of or
22 perceived conflicts of interest.

23 (Brief interruption)

24 **DR. ZIEMER:** I'm sorry?

25 **DR. MELIUS:** That was just -- just background I

1 think.

2 **DR. ZIEMER:** Oh, okay. So the whole point of
3 this is that it acknowledges that there does
4 exist those perceived conflicts and that to the
5 extent that you can do it you'll try to
6 minimize those as well. But the -- those
7 clearly are not legal conflicts of interest.
8 Now, that's aside from the other things you
9 mentioned, Jim, which seems to be a whole other
10 list of things.

11 **DR. MELIUS:** Yes -- No, some of those are
12 specific to each group that this applies to.

13 **DR. ZIEMER:** Yeah, yeah, yeah.

14 **DR. MELIUS:** The different -- I mean there's
15 the one for federal employees. There are --
16 There are requirements for contract employees,
17 a stack of requirements. So -- So the -- but I
18 mean I'm comfortable with that wording, Paul,
19 and the concept. And -- And I think if you
20 would be kind enough to email that to me.

21 **DR. ZIEMER:** Okay. If it's agreeable with the
22 other working group members we can either add
23 that as a part of the comments for item one or
24 recommend that it be included in the footnote
25 or something like that. But I can send you the

1 wording but we need to hear from Mike and --

2 **DR. MELIUS:** That's right.

3 **DR. ZIEMER:** -- Brad on that, I think.

4 **DR. MELIUS:** Mike, Brad, are you comfortable
5 with that?

6 **MR. CLAWSON:** Yeah, I think it sounded pretty
7 good. I don't know how we'd fit it into this,
8 if we'd fit it in as another footnote or -- or
9 how. I guess we'd have to kind of leave that
10 up to you to see how --

11 **DR. MELIUS:** I'll -- I'll do a draft on it and
12 -- you know, we will have another -- everybody
13 has another look at this draft before, you know
14 -- at -- at our August 8th call so my plan
15 would be to circulate what we come up with to
16 the whole Board hopefully in the next day or so
17 and then we -- we can all discuss it again on
18 the August 8th call so --

19 **MR. CLAWSON:** Okay.

20 **DR. MELIUS:** Mike?

21 **MR. GIBSON:** Yeah. I believe that the -- that
22 the appearance of the conflict of interest, is
23 that part of the language on the federal
24 regulations or is that just something that --

25 **DR. ZIEMER:** I don't know that it's -- it's

1 even sound. I think -- I don't know the
2 answer to that. Maybe Emily does. I don't --
3 I don't think it's an official kind of a
4 conflict of interest.

5 **MS. HOWELL:** This is Emily. There are some
6 federal regulations regarding an appearance of
7 a conflict of interest that have to do with
8 government employees and covered relationships
9 so there is -- there are some appearance issues
10 that are legal but the majority of I think what
11 -- what NIOSH is talking about in this policy
12 are more policy-based appearance issues as
13 opposed to the legal ones.

14 **DR. MELIUS:** NIOSH may very well want to, you
15 know, provide the clarification or I mean -- or
16 a word that's appropriately -- I think what's
17 important is to sort of capture the -- the
18 general concept. And as part of the footnotes
19 I think what Paul wrote will be -- would be --
20 is helpful for that.

21 **DR. WADE:** I think NIOSH understands the spirit
22 of what's being said and shares that spirit,
23 you know. We'll -- We'll see that particular
24 comment and we'll consider how best to include
25 it.

1 **MR. GIBSON:** And then -- then we'll have a --
2 once you have it drafted in there we'll have a
3 chance to comment on it?

4 **DR. WADE:** Yeah.

5 **DR. MELIUS:** Yeah.

6 **MR. GIBSON** Okay.

7 **DR. MELIUS:** Moving along to comment two, this
8 was a -- a -- a change from the previous draft.
9 I actually -- I think we -- that was a comment
10 during our last Board meeting and then followed
11 up with some written comments to -- to NIOSH to
12 that effect. But that to me the whole -- the
13 whole policy was much easier to -- to
14 understand and work with if it separated out,
15 you know, who would focus on -- probably
16 because the legal and other sort of background
17 requirements are different for some of these
18 different groups depending on our functions and
19 -- and so forth and do that. So I was
20 supportive of having a separate approach for
21 separate policy or at least application of the
22 policy to -- for the Board and for the Board's
23 contractors.

24 But I was -- was uncomfortable with the
25 suggestion that somehow we would create and

1 administer our own policy, part -- partly
2 because that didn't really fully reference, you
3 know, the FACA's and -- and other requirements
4 that, you know, cover us as special government
5 employees and so forth. It looked fairly self
6 -- you know, sort of self-serving that we
7 would, you know -- we're -- we're creating, you
8 know -- we're commenting on one that's for
9 other people and then here, we're creating our
10 -- our own. If you look at what is included in
11 I believe it's appendix 1 which was also in the
12 last policy, the three exclusions that they --
13 I think the word is NIOSH recommends the
14 following exclusions. So the wording's a
15 little confusing here but I personally don't --
16 I mean I think -- I specifically think that
17 these are fine operationally.

18 But I am assuming these are sort of
19 above and beyond what the -- certainly
20 compatible with the current legal requirements
21 for us as FACA members and special government
22 employees, and view them as sort of a way of
23 operationalizing that, you know, so that the
24 public would be more aware of how we're
25 operating, when we are making -- you know, when

1 a person, you know is excused from a particular
2 discuss-- a Board member is excused from the
3 discussion or voting on a particular --
4 particular issue.

5 **DR. WADE:** This is Lew. I think -- I think
6 there's sort of two pieces to it. That if you
7 take the FACA rules they'll tell you or point
8 to whether or not a conflict exists and -- and
9 no, we should refer to them in this document, I
10 agree. This section was really trying to say
11 if a conflict exists, what are the exclusions
12 or the actions required of a Board member. And
13 I believe that the Board has evolved to this.
14 I guess it would not be inappropriate for the
15 Board to -- to -- to reinforce this and make it
16 its own. And I think that's what -- what's
17 happening here as NIOSH is saying, you know,
18 this is how the Board has been operating. We
19 think maybe the Board should -- should --
20 should make that firm in its deliberations.
21 What constitutes a conflict we can use the
22 factor regulations or the Board could go beyond
23 if it wished.

24 **DR. MELIUS:** Yeah. What -- And I guess what I
25 was proposing was two things. One is that

1 maybe it should be separate comments. One is
2 that I don't think that we should, at least as
3 implied here, you know, create and administer
4 our own policy.

5 **DR. WADE:** Right.

6 **DR. MELIUS:** I think we should, you know,
7 discuss that but I think that more needs to be
8 in the context of our -- our work as a FACA and
9 so forth. And that would draw in -- and I
10 frankly think that the Board ought to discuss
11 that separately from these comments because I
12 don't think we should hold up the overall
13 comments while we, you know, create and
14 administer our -- our own or how we're going to
15 do -- do that.

16 But secondly I -- I do think that since
17 those three specific ways that we, you know,
18 currently administer the -- the current
19 practice, if we know it's compatible with FACA
20 and the other requirements. And then we should
21 -- we can speak to that so I was proposing that
22 we do say that we concur with those particular
23 points.

24 **DR. ZIEMER:** This is Ziemer. I was just
25 wondering conceptually what the intent here is.

1 I assume that NIOSH is essentially saying in
2 essence there needs to be a fair amount of
3 independence of the Board from NIOSH and in
4 order to preserve that independence the Board
5 perhaps should not be -- have its policies
6 dictated by NIOSH per se even though in essence
7 we would want a policy that was at least as
8 rigorous and -- and quite parallel.

9 But I guess NIOSH is suggesting that
10 there be a specific document which is the
11 Board's conflict of interest policy and that
12 would speak to both the Board and its
13 contractor. But I -- I don't know what create
14 and administer means per se. I think the
15 create part means that, Jim, I guess that means
16 that we would put in place a policy and it
17 could look very much like the NIOSH. There
18 ought to be a great deal of parallelism. I'm
19 not sure what administer means because in
20 practice the administration of the Board in a
21 practical way, NIOSH has some -- some
22 responsibilities for helping the Board conduct
23 its work.

24 **DR. WADE:** Right. This is Lew. Let me speak
25 to that if I might again briefly. I think

1 there are two parts to this. There's the part
2 that -- that says is a Board member conflicted
3 or not. Now, there are FACA rules that will be
4 used and are used now to determine whether or
5 not a Board member is conflicted for a
6 particular site for example.

7 **DR. ZIEMER:** Right.

8 **DR. WADE:** And again there's the FACA rules in
9 place. The Board could go beyond that; it
10 could add to that. It really can't negate that
11 --

12 **DR. ZIEMER:** Right.

13 **DR. WADE:** -- but it could put its own thought
14 beyond the FACA rules. And -- And whether you
15 want to do that or not I think you can
16 deliberate on. The second part is if a
17 conflict has been determined to exist using
18 those rules then what happens? And there the
19 Board if you think about it, the Board sort of
20 self-administers that. The Board has developed
21 these sort of operating rules. And -- And if
22 a Board member is conflicted then the Board
23 member steps away from the table or takes
24 whatever remedy is appropriate here. So I
25 think in a way the Board is sort of

1 administering the remedy if a conflict has been
2 determined to exist. But I ask the question --

3 **DR. ZIEMER:** What administer means in this
4 case, just to make sure that we -- we knew what
5 the policy required.

6 **DR. WADE:** When I asked can I find a Board vote
7 on these remedies, no one has shown me where
8 that exists. And therefore I would suggest
9 that if the Board is comfortable with these
10 remedies then the Board, you know, by its
11 recommendation to NIOSH or by whatever vehicle
12 the Board wishes to take, makes this its -- its
13 policy with regard to remedy.

14 **DR. MELIUS:** I -- This is Jim. I just think
15 we need to be clear that in adopting these, if
16 these are in essence, you know, compatible
17 with, you know, meet the requirements of FACA
18 and so forth, and meet the requirements under,
19 you know, how you -- how the federal agency
20 administers the conflict of interest rules
21 under -- under FACA and -- and their review
22 because I don't think it's --

23 I disagree a little bit with your
24 description, Lew. I don't think that we self-
25 administer. We -- The administration as I see

1 it is -- is, you know, there's -- you have a
2 list of what the conflicts are. When an issue
3 comes up, Paul, during a meeting, Paul as
4 chair, you know, alerts you or vice versa and,
5 you know, the -- the appropriate, you know, the
6 Board members who may be affected by that then
7 is reminded that they, you know, need to go to
8 the audience, not vote or whatever, and -- and
9 -- and you make an announcement of that.

10 **DR. WADE:** Right. But --

11 **DR. MELIUS:** And -- And I think -- which is
12 all fine and I think doing that in a public way
13 I think is -- is helpful. I think having these
14 three points is sort of the -- our rules for
15 how this is operationalized I think would be
16 helpful to have and I have no problem
17 supporting that. It's -- I don't view it quite
18 as us administering it ourselves I think.

19 **DR. WADE:** But the -- the Board could decide
20 upon a different set of rules and then it would
21 be the -- it would be my judgment as to whether
22 or not those rules were consistent with FACA
23 and the requirements. But these are the rules
24 that we've been operating to.

25 **DR. MELIUS:** Yeah.

1 **DR. WADE:** And if the Board's comfortable with
2 them, you know, stating that I think puts us
3 right back to where I think we all want to be.

4 **DR. MELIUS:** I guess I was more as concerned
5 about understanding what create and administer
6 means. And -- And to me that implied that,
7 well, we just made these up and, you know,
8 independent of the other requirements and
9 independent of our --

10 **DR. WADE:** Well, point taken. I mean I
11 understand.

12 **DR. MELIUS:** That was -- And maybe if I try to
13 reword the comment, too, to capture that a
14 little bit more clearly.

15 **DR. WADE:** Surely.

16 **DR. MELIUS:** Brad, Mike, is that all right with
17 you?

18 **MR. CLAWSON:** This is Brad. Yeah, this is the
19 one that I have a little bit of question on
20 because I guess when we start getting into the
21 Board administering their own conflict of
22 interest I guess I was -- I was kind of saying
23 that we -- I feel like we patrol through Lew
24 and legal counsel and so forth but I'd hate to
25 be kind of held accountable -- accountable also

1 for it, too.

2 **DR. WADE:** I understand.

3 **DR. MELIUS:** Paul, is that --

4 **DR. ZIEMER:** Yeah, you're going to reword this
5 in some way but ultimately I -- I think the --
6 the sort of policy question here is will --
7 will we have a separate document which will be
8 the Board's statement of conflict of in-- Board
9 policy on conflict of interest? You know, and
10 include all the FACA -- FACA requirements and
11 any other requirements.

12 For -- For example, right now we have
13 these for the contractor and for NIOSH you --
14 you have these different sort of litmus --
15 litmus tests. Did the individual have the --
16 well, I'm looking for the questions. Did --
17 Did -- Did they have a supervisory
18 relationship at a site or did they do work that
19 impacted on the policies on the site and those
20 kinds of questions. I guess my question is are
21 we going to have similar tests for the Board?
22 How do we determine -- I think it's very
23 important that we determine what constitutes a
24 conflict of interest for a Board member.

25 **DR. MELIUS:** And I would -- I guess what I was

1 proposing is that, one, is that we have some
2 discussion of that among the Board members. We
3 really never -- the Board has never discussed
4 that -- that issue in the context of this
5 document.

6 **DR. ZIEMER:** That's right. That's right.

7 **DR. MELIUS:** And I would --

8 **DR. ZIEMER:** And -- And I think we have to ask
9 the question for example, do we want a -- a
10 conflict of interest policy that sort of
11 parallels this? Is what a -- is what is a
12 conflict of interest for a site document owner,
13 is, you know, is that kind of a definition also
14 applied to a Board member?

15 **DR. MELIUS:** Or does it apply to a working
16 group chair? Do we --

17 **DR. ZIEMER:** Yeah. All of those kinds of
18 questions, yeah.

19 **DR. MELIUS:** Or something like that and --

20 **DR. ZIEMER:** Yeah, and see, we have a different
21 set of groups. We have working group chairs
22 and working group members and subcommittee
23 chairs and members and so on. So there might -
24 - there might be a whole category of things we
25 sort of evolved on practical things, on voting,

1 on dose reconstruction issues and on special
2 exposure cohort petition issues and so on. But
3 there may be some issues on working groups that
4 we need to clarify and so on. Anyway, I'm sort
5 of -- I think I'm sort of leaning toward the
6 idea that we -- we want to have some sort of a
7 document that spells out for the Board members
8 some specific things, but it ought to have some
9 very good parallels with this documents.

10 **DR. MELIUS:** Yeah, I agree. I think I'm a
11 little at a loss to figure out how to best
12 develop that document because I think -- I
13 think that we need some discussion of sort of -
14 - a little clearer discussion or maybe refresh
15 our memory which isn't -- may not be so clear
16 on the FACA requirements and so forth which we
17 go through as special government employees
18 which have always been --

19 **DR. ZIEMER:** Yeah. And -- And those we don't
20 have to approve or disapprove. I mean they're
21 in place and that part of it would just be a
22 matter of reminding ourselves what the rules
23 are.

24 **DR. MELIUS:** Right. And we need to make --
25 yeah, we need to -- exactly. We need to make

1 sure we're not creating something that is
2 contrary to those or --

3 **DR. ZIEMER:** Right.

4 **DR. MELIUS:** -- actually conflicts with those
5 as -- as our rules are implemented. And --
6 And I think there's a balancing to that because
7 we don't want to also sort of unfairly
8 restrict, given the small number of Board
9 members, given the fact that the Advisory Board
10 was set up to -- to represent different
11 backgrounds and so forth, we need, you know, to
12 understand how we're operating. We're not
13 operating as someone who's writing a document
14 or doing a dose reconstruction where there are
15 people that they deliberated things and it's
16 expected that there be -- we will not always
17 agree with each other, you know.

18 **DR. ZIEMER:** Yeah.

19 **DR. MELIUS:** We represent those different
20 viewpoints and backgrounds and so it's a little
21 bit more -- more complicated.

22 **DR. ZIEMER:** Right. And it's not like an
23 agency where sort of ultimately everybody's got
24 to line up and --

25 **DR. MELIUS:** Yeah.

1 **DR. ZIEMER:** -- and salute the boss.

2 **DR. MELIUS:** Right, right. And so it would be
3 -- frankly it's fairly easy given everybody's
4 experience and background to come up with a
5 very strict policy that there'd be nobody left
6 to vote on a particular issue.

7 **DR. WADE:** Jim, this is Lew. Just as a matter
8 of staff, would you like me to have the
9 appropriate FACA rules sent out to all Board
10 members prior to the call or would you like a
11 presentation or --

12 **DR. MELIUS:** I think it would be better. I
13 don't think we should try to do it on the
14 conference call.

15 **DR. WADE:** Okay.

16 **DR. MELIUS:** I don't -- and Paul, you -- Mike
17 or Brad, I mean --

18 **DR. ZIEMER:** Well, I don't -- I don't think we
19 can develop the Board's policy on this
20 conference call.

21 **DR. MELIUS:** Yeah.

22 **DR. ZIEMER:** But we somehow have to deal with
23 the issue that this document as proposed is --
24 exempts the Board and the Board's contractor
25 from the policy.

1 **DR. MELIUS:** Why don't I clarify -- clarify
2 that comment. Add a section about, you know,
3 recommending a positive step that we develop a
4 document?

5 **DR. ZIEMER:** Right. And -- And I would go so
6 far as to say particularly when you get to the
7 next item which has to do with the contractor I
8 think we should -- we could even note in the
9 footnote -- in fact this is one of the other
10 ones I had -- is that the Board has indicated
11 its intent to require its contractor and
12 subcontractors to meet the same COI standards
13 as NIOSH contractors.

14 **DR. MELIUS:** Well --

15 **DR. ZIEMER:** Or something equivalent.

16 **DR. MELIUS:** Yeah. Yeah.

17 **DR. ZIEMER:** We'll -- We don't want the
18 document implying that our contractor doesn't
19 have to worry about conflict of interest.

20 **DR. MELIUS:** Yeah.

21 **DR. ZIEMER:** And that we will spell it out but
22 it'll at least be as rigorous as what's
23 required here.

24 **DR. MELIUS:** Yeah.

25 **DR. ZIEMER:** Something to that effect.

1 **DR. MELIUS:** At the time -- I can capture that
2 in the -- in the next --

3 **DR. ZIEMER:** Yeah. In the next bullet.

4 **DR. MELIUS:** In the next bullet. But --
5 Because really at the time we awarded the
6 contract to our contractor and went through --
7 put out the bid and so on we had actually
8 adopted at -- at that point conflict of
9 interest requirements for that contractor.

10 **DR. ZIEMER:** Right. Right. And there is a --
11 the contractor has on file a contract -- a
12 conflict of interest policy which --

13 **DR. MELIUS:** Right.

14 **DR. ZIEMER:** -- has been approved.

15 **DR. MELIUS:** That was in fact more rigorous
16 than what was in place at that point within
17 NIOSH. Now, NIOSH has since had for ORAU and
18 its other contractors. Now NIOSH has a
19 essentially a new policy and we need to re-
20 examine that in the -- the context of --

21 **DR. ZIEMER:** Yeah. And see, here again our
22 contractor has different -- different
23 responsibilities than the NIOSH and the ORAU
24 folks for example. They have certain document
25 owners. In a sense we have certain kinds of

1 document owners, too, but they are different.

2 **DR. MELIUS:** Yeah. Yeah, there's a process and

3 --

4 **DR. ZIEMER:** We have to think through at just
5 how you go about that. Anyway, yeah.

6 **DR. MELIUS:** Mike and Brad, are you comfortable
7 with that, those changes?

8 **MR. CLAWSON:** This is Brad. Yeah, I think we
9 really need to look into it. It's -- It's an
10 interesting web that we have there.

11 **DR. MELIUS:** I think so, too.

12 **MR. GIBSON:** Yeah, this is Mike. You know,
13 again my only concern is as far as the Board
14 members being conflicted for this or for that.
15 I can understand the financial interest and
16 this and that but when site experts who've ran
17 a program can help write up the site profile
18 you'll know they're not the document owner, you
19 know, that's a conflict to me. Not financial
20 necessarily but, you know, if they ran a --
21 they ran a program they're not going to step on
22 their own toes when they write a site profile.
23 And so it's a -- it's a slippery slope there.

24 **DR. ZIEMER:** Yeah, I think it'd be-- I'm --
25 Mike, I'm suggesting we could have some of

1 those same issues with our own contractor, too,
2 when they do reviews so we have to look at the
3 other side of that as well.

4 **MR. GIBSON:** All right.

5 **MR. CLAWSON:** That'-- This is Brad. But on
6 the other hand, too, looking at the Board
7 members, how -- how we fit into this whole
8 program, it kind of seems a little bit
9 ridiculous because 25 years ago you spent one
10 day at one site and now you're conflicted. And
11 I've heard a couple of those stories already.
12 But it's -- I -- I think we've got a problem
13 there.

14 **MR. GIBSON:** This is Mike, and I'm, you know, I
15 guess to clarify my point a little bit more.
16 I'm still waiting on the information as to how
17 many hourly or salary workers who are not at a
18 management or leadership position helped write
19 the site profile documents as a site expert.
20 And they -- I'm not talking about being
21 consulted after the fact in a town hall
22 meeting. I'm talking about a document author.

23 **DR. ZIEMER:** Well, I mean the answer is
24 probably very few.

25 **MR. GIBSON:** Well, I'm -- I would almost bet

1 there were none.

2 **DR. ZIEMER:** Yeah. That's pretty few.

3 **MR. GIBSON:** My point is --

4 **DR. ZIEMER:** Yeah, I understand the point.

5 **MR. GIBSON:** If you oversee a program you may
6 see it one way but for the one out there with
7 your nose in the glove box you may see it a
8 different way on how it was implemented.

9 **DR. ZIEMER:** Yeah. Yeah.

10 **DR. MELIUS:** The comment two I will -- I will
11 change as we discussed and say the Board will
12 move ahead to develop its own -- develop a
13 document in conversation with NIOSH, etcetera,
14 and FACA and so forth. Similarly on comment
15 three between this discussion about reviewing
16 that proposal, the conflict of interest policy
17 for our contractor.

18 **DR. ZIEMER:** Yeah, I would think we should.

19 **MR. CLAWSON:** I agree with that. This is Brad.

20 **DR. MELIUS:** Comment four on -- which deals
21 with section 3.0 which is the disclosure and
22 exclusion section. And I thought here was --
23 one of our comments before was that the --
24 initially in one of my personal comments to
25 NIOSH was that the corporate conflict was --

1 was not clearly covered by the document and
2 some of that was -- was definitional, some in
3 terms of the way that earlier document was --
4 was written. We -- And they've added
5 corporate conflict of interest here. However,
6 as they go through and deal with these series
7 of questions about it, it wasn't clear to me
8 that they were always consistent in how that
9 could apply to corporate versus personal
10 conflict of interest. The questions were all
11 sort of personal questions.

12 **DR. ZIEMER:** I think all the questions are
13 personal. I don't see how they apply to
14 corporate. And the corporate thing is very
15 tricky and -- and I don't know if -- if there
16 are a series of questions but Lew, you know,
17 they are similar to questions that arose on our
18 own contractor relative to -- I think to Rocky.
19 You could say, okay, what kind of questions
20 were asked in order to determine -- you know,
21 there was a conflict of interest decision
22 determined there.

23 **DR. WADE:** There are a series of questions that
24 are part of the SC&A conflict of interest
25 policy.

1 **DR. ZIEMER:** Yeah, that's what I meant. And
2 I'm just -- I'm -- I'm wondering if -- if it
3 would help to have a parallel. The questions
4 themselves help define what a conflict of
5 interest means.

6 **DR. WADE:** Certainly, you know, I can't speak
7 for the agency but it certainly -- Jim's
8 comment certainly seems appropriate to me --

9 **DR. ZIEMER:** Yeah.

10 **DR. WADE:** -- and I think that I would
11 recommend that --

12 **DR. ZIEMER:** Yeah.

13 **DR. WADE:** -- we just switch in somehow --

14 **DR. ZIEMER:** Expand that so it clearly covers
15 the corporate.

16 **DR. WADE:** Right.

17 **DR. MELIUS:** And if you read some of 'em you
18 could just assume individual and corporate.
19 But some of 'em just don't read -- read
20 correctly or (inaudible) correctly for -- to go
21 for corporate. And the same with what's
22 referred to as Appendix 2 which is the
23 disclosure form.

24 **DR. ZIEMER:** Which parallels this, too.

25 **DR. MELIUS:** It parallels this.

1 **DR. ZIEMER:** Yeah.

2 **DR. MELIUS:** But we just need to clarify that.
3 And those are, you know, the corporate conflict
4 of interest and those corporate requirements
5 are clearly part of the procurement review and
6 so forth so it's not a -- I mean it's -- there
7 are certain requirements that I think we just
8 need to take this -- include in this policy
9 just making sure we can operationalize this.
10 And where there are differences or it's not
11 appropriate to -- to, you know, ask the same
12 question for a corporation as you would for an
13 individual, you know, then we'll just do it.
14 But I think it would help a lot if it were --
15 it were clarified.

16 **MR. GIBSON:** This is Mike. ORAU has -- has its
17 own corporate conflict of interest policy,
18 right?

19 **DR. MELIUS:** I believe so.

20 **DR. ZIEMER:** But it would have to be
21 subordinate to this, right, ultimately?

22 **DR. WADE:** Right.

23 **DR. MELIUS:** Right. Correct.

24 **DR. ZIEMER:** That is, it couldn't be in
25 conflict with this.

1 **MR. GIBSON:** But we could keep using it?

2 **DR. ZIEMER:** And it couldn't be more
3 restrictive I suppose but --

4 **MR. GIBSON:** Right.

5 **DR. ZIEMER:** But yeah, I think it would be
6 helpful to clarify those -- those corporate
7 questions.

8 **MR. GIBSON:** Well, and this is Mike again. You
9 know, I just think some of the restrictions I
10 guess on most of the parties needs some
11 explanation. For example, you know, there may
12 be some -- some -- some corporations or some
13 agencies or whatever that may just make
14 interpretations on that, what is or isn't a
15 conflict. And, you know, it can be detrimental
16 to some people. You know, we had one of our
17 Board members that resigned due to conflict
18 and, you know, I'm not so certain that there
19 was a actual conflict there rather than just a
20 interpretation made by someone who has, you
21 know, a policy for themselves.

22 **DR. ZIEMER:** Uh-huh. And that might have been
23 more of a perceived than real. Well, okay.

24 **MR. GIBSON:** And -- Or -- Yeah, or related
25 to, you know, some of the contracting --

1 **DR. ZIEMER:** Yeah, yeah.

2 **MR. GIBSON:** -- requirements which are, you
3 know, in some -- some cases can be, you know
4 fairly stringent on -- on some of these issues.

5 **DR. ZIEMER:** Okay.

6 **DR. MELIUS:** Number five I think is I think --
7 is a relatively minor comment but there's a I
8 think in some cases they refer to a DOE/AWE,
9 you know Atomic Weapons Employer; sometimes
10 they don't. And I don't think that they are
11 always consistent with that. Did you work for
12 DOE in the past? Well, I think it -- it might
13 not be common but I think there's also a
14 question of --

15 **DR. ZIEMER:** Yeah, is there -- is it
16 intentionally leaving that out or is that an
17 oversight.

18 **DR. MELIUS:** I think they in some sense it may
19 have been an oversight. But let's point it out
20 and someone just needs to go there --

21 **DR. ZIEMER:** Uh-huh.

22 **DR. MELIUS:** -- and clarify that.

23 **DR. ZIEMER:** Yeah.

24 **DR. MELIUS:** Number six we've already
25 discussed. That's the appendix 2 item which

1 there ought to be a corporate form also. This
2 is I think relatively minor but number seven --
3 number seven, the disclosure form. I should
4 have referenced the question on it. Hang on a
5 second. There's a question on -- on page 21
6 it's question number 13 which has to do with
7 legal cases. If marital, etcetera,
8 professional relationship with any attorney at
9 the time the attorney is or was representing
10 claim with DOE or site operator. Mostly I
11 think that refers to expert advice. And
12 usually it's not with the attorney as much as
13 it's I think we're also trying to find out what
14 was your relationship relative to a partic--
15 working on a -- a case involving a particular
16 site. So the initial practice is to cite it
17 versus what is -- what are the cases involved,
18 not just which attorney because that gets very
19 confusing.

20 **DR. ZIEMER:** Uh-huh.

21 **DR. MELIUS:** It can get confusing.

22 **MR. GIBSON:** I think, Jim -- this is Mike --
23 that part of that is described in I believe
24 it's some of the first few pages perhaps --
25 within the first six pages of the -- of the

1 ORAU corporate COI policy about being expert
2 witnesses in a -- in a litigation and
3 otherwise.

4 **DR. MELIUS:** Yeah. And it could be. I don't
5 recall that part of it but it could very well
6 be there. And in the normal -- I mean -- I
7 mean to some extent you may want to ask
8 questions relative to working with an attorney
9 involved in that but -- but it's also I think
10 part of it is to discover what they said you
11 were an expert, it's what cases it's what --
12 what cases that you were in and some -- it's
13 pretty standard and so if the requirement for
14 federal cases is you know, you list your
15 previous work for a number of years. I forget
16 what the year requirement is but by the --

17 **DR. ZIEMER:** Verified by case rather than --

18 **DR. MELIUS:** Not that I worked for, you know,
19 Bob Smith and, you know, but I worked for --
20 did expert work on so and so versus --

21 **DR. ZIEMER:** Yeah. That sounds reasonable.

22 **DR. MELIUS:** Yeah. I don't think it's -- as I
23 say I don't think it's a bit -- I think it
24 would actually be helpful in terms of -- of the
25 disclosure. And then comment number eight.

1 That one refers to the disclosure forms and I
2 just think it's the second paragraph of section
3 4.0. And it currently says disclosure form
4 shall be updated as needed. I think there
5 should be some time frame for that. You know,
6 seven days, ten days -- I don't know exactly
7 what's practical but it certainly shouldn't be
8 left open-ended.

9 **DR. ZIEMER:** You're saying within a certain
10 time period after a commitment is made or
11 something, say four zero?

12 **DR. MELIUS:** Yes, it's updated as needed.

13 **DR. ZIEMER:** It's kind of open-ended right now.

14 **DR. MELIUS:** It's like, well, you know, if you
15 get around to it and so forth. And I -- I
16 would think that the --

17 **DR. ZIEMER:** You didn't have a specific time
18 period. You're just saying, you know, spell
19 out what it is, what are the ground rules here?

20 **DR. MELIUS:** I'm saying seven days but I mean
21 it's -- somebody told me it was --

22 **DR. ZIEMER:** It was ten --

23 **DR. MELIUS:** Ten. It was more practical to do
24 it in ten days or fourteen days or whatever.

25 **DR. ZIEMER:** Whatever it is.

1 **DR. MELIUS:** That's -- That's fine.

2 **DR. ZIEMER:** Yeah, I agree.

3 **DR. MELIUS:** Mike and Brad, you both okay with
4 that?

5 **MR. GIBSON:** Uh-huh. Yes.

6 **MR. CLAWSON:** This is Brad. Yeah, I agree with
7 that.

8 **DR. MELIUS:** Comment number nine, section 5.5
9 refers to a site profile document owner.

10 **DR. ZIEMER:** Uh-huh.

11 **DR. MELIUS:** And for the previous draft the
12 owner was referred to as the -- the author of
13 the -- the document. Now, I mean at least my
14 interpretation is that sort of gauging from
15 now, I'm not quite sure what motivated the
16 change from author to --

17 **DR. ZIEMER:** Now, the draft --

18 **DR. MELIUS:** The draft --

19 **DR. ZIEMER:** The draft still used owner, didn't
20 it?

21 **DR. MELIUS:** It was owner and then -- but they
22 kept referring to it as the author of a
23 document I believe. Now, it's the author has
24 become a writer/editor. It seems -- I don't
25 think the functions have changed as described

1 earlier, at least not the -- the requirement
2 they have a responsibility for their checking
3 all of the work people contribute to the -- the
4 document in referencing it and so forth but it
5 certainly implies that it's a more passive
6 role.

7 And as I've certainly said when we've
8 discussed this document there's -- we've not
9 been -- we've not seen a lot of -- we haven't
10 seen active owners. Well, maybe -- they may
11 very well be out there by documents that have
12 been being active we've only really, you know,
13 interfaced a lot with a few and then since this
14 policy has been changed and implemented so it's
15 -- I don't think it's fair to reach an overall
16 assessment on -- on how this is -- will be
17 implemented.

18 But at the same time I mean a lot is
19 depending on that document owner being very
20 actively involved in -- in -- in, in reviewing
21 and seeking out other opinions on or other
22 expertise or a wide range of expertise on a
23 particular issue or about -- information about
24 -- about a particular -- particular site. And
25 we -- I mean a lot of the success or failure of

1 this policy or at least of the credibility of
2 this policy and what's done is going to depend
3 on that. And I guess I get a little bit
4 concerned when it -- there's some wordsmithing
5 which may be minor. It may not be something to
6 be overly concerned about but appears to sort
7 of downgrade that -- that function.

8 **DR. ZIEMER:** Well, I -- I think NIOSH knows
9 what the issue is. I'm -- I'm wondering if
10 part of the problem is in fact finding the
11 right words because we are aware and they are
12 aware of some cases where it appeared that the
13 -- the document owner really didn't know that
14 much about the site and didn't appear to be in
15 a position to speak on behalf of the concepts
16 being evaluated and soon to defer to the site
17 experts on almost all issues.

18 And -- And we were concerned and I
19 think NIOSH was concerned, and certainly
20 members of the public were concerned that at --
21 at least it looked like there were cases where
22 the -- where the so-called owner didn't really
23 own it. They didn't have a grasp for what was
24 going on. And somehow we want to make it clear
25 that the owner's got to know the document and

1 has got to have verified what -- and somehow
2 validated input from various site experts. But
3 I don't know -- I don't know what the right
4 words are in terms of writer, editor, author,
5 owner. And -- But have I characterized, Jim,
6 the concern there?

7 **DR. MELIUS:** Absolutely. And I think --

8 **DR. ZIEMER:** We want to make it clear that this
9 person is not just a -- a cut and paste person
10 that sits there and takes whatever site experts
11 feed them and just paste it in, right?

12 **DR. MELIUS:** Yeah. Absolutely.

13 **DR. ZIEMER:** Right. And I think NIOSH is aware
14 of that concern and maybe they haven't fully
15 captured the issue but I guess you're
16 suggesting here that somehow some words that
17 would even strengthen the -- the idea?

18 **DR. MELIUS:** I just wanted to -- to also to
19 reinforce about this issue.

20 **DR. ZIEMER:** Yeah. Yeah.

21 **DR. MELIUS:** But that's -- I mean when we
22 received this updated document we didn't really
23 receive --

24 **DR. ZIEMER:** Yeah.

25 **DR. MELIUS:** -- any sort of indication of what

1 the -- the changes are --

2 DR. ZIEMER: Yeah.

3 DR. MELIUS: -- in wording again.

4 DR. ZIEMER: Yeah. Editor -- I mean I can
5 edit a document. I can get rid of the dangling
6 participles, right, Jim?

7 DR. MELIUS: Right. Very well.

8 DR. ZIEMER: Without knowing anything about the
9 site.

10 DR. MELIUS: And within the, you know, federal
11 bureaucracy there are -- there's a --

12 DR. ZIEMER: Technical attitude.

13 DR. MELIUS: -- title called writer/editor
14 that's --

15 DR. ZIEMER: Yeah.

16 DR. MELIUS: -- a technical writer that pieces
17 together things but not necessarily with any
18 technical expertise or knowledge about the --
19 the material. And that's different than, you
20 know, someone with much more --

21 DR. ZIEMER: Let -- Let me ask Lew. Because I
22 think, Lew, NIOSH is sensitive to this issue.

23 DR. WADE: Yes, NIOSH is sensitive to this
24 issue but I would suggest that --

25 DR. ZIEMER: Probably the -- if we could

1 somehow make it clear that -- and I think they
2 are attempting to make it clear that this
3 person's role is not just pasting paragraphs
4 together.

5 **DR. WADE:** Right. But I think a strong
6 statement on the part of the Board and any
7 advice that the Board would want to offer as to
8 how to make this clear would be appreciated.

9 **DR. ZIEMER:** Jim, to some extent you've done
10 that when you said the person should not just
11 be assembling sections written by experts
12 without a critical review so -- and that's the
13 idea certainly.

14 **DR. WADE:** And --

15 **DR. ZIEMER:** So maybe you've captured -- maybe
16 you've captured the concern here.

17 **DR. MELIUS:** I don't know quite how to go
18 beyond it at this point but -- and -- and aside
19 from whatever words are in here the -- the test
20 is going to be actually in the implementation
21 and --

22 **DR. ZIEMER:** Yeah. Yeah.

23 **DR. MELIUS:** -- evaluation.

24 **DR. ZIEMER:** Right. Right.

25 **DR. WADE:** Well, I would make sure that those

1 sentiments are -- are in any document you send
2 forward.

3 **MR. CLAWSON:** Jim, this is Brad. One -- One
4 of the things, you know, that I've heard so
5 often that has come out and we've been hitting
6 on it very hard, but this document owner can't
7 be a façade. He can't be a person up there
8 just -- just doing this. This is a person that
9 -- that owns this document, that knows these
10 profiles, has done his research into it. And I
11 think this is what we're hearing from the
12 public and so forth. I don't know the exact
13 words on how to be able to put it in but -- but
14 this document owner has got to be able to
15 justify and back up what -- what that site
16 profile is all about.

17 **DR. ZIEMER:** That's true. Exactly.

18 **DR. MELIUS:** And I would just add that this
19 comment applies to I mean the other owners
20 also, the TIB, technical information bulletin
21 owners and others which are all described as
22 primary writer/editors. And again it's the
23 responsibility is in some ways greater than
24 that and that needs to be understood.

25 **DR. ZIEMER:** Yup.

1 **DR. MELIUS:** Mike, do you have any comments on
2 that or --

3 **MR. GIBSON:** Yeah. And also, you know, like
4 the definitions of critical review. I think we
5 have to be very careful in how we spell it out
6 so -- in order to at least allow for some
7 outside information and not just have all the
8 critical reviewers necessarily that have worked
9 for the -- the program manager or whoever else
10 that put the document together. There should
11 be some critical reviews, not just town hall
12 meetings by people that, whether they were
13 hourly or salaried, actually were hands on
14 people out in the field.

15 **DR. MELIUS:** I think certainly if I were -- and
16 actually providing the -- the attribution for
17 each part of the document will -- will help to
18 judge that but, you know, certainly --

19 **MR. CLAWSON:** This is -- This is Brad again.
20 And, you know, it -- it gets back to the basis
21 of what these document owners own. We're
22 basing a lot of this off the site profile.
23 Everything that we're -- we're dealing with is
24 really based off -- off of this site profile
25 and this is a very critical portion of this

1 dose reconstruction and everything else that
2 we're doing so I feel that this is one area
3 that we really need to be conscious of -- of
4 how it's been owned, who's owned it and the
5 information that is fed into this.

6 **DR. ZIEMER:** Okay. I agree.

7 **DR. MELIUS:** Number -- Comment number ten is -
8 - refers to -- it's section 6.4 which is a
9 complex-wide technical information bulletin
10 owner which is listed under the non-key program
11 functions. And if I understand that correctly
12 that means a sort of lesser standard of
13 conflict applied here. And I think certainly
14 this -- this one sort of -- this sort of begs
15 the difference about in terms of what, you
16 know, is the example I used. Well, that
17 technical information bulletin applies to a
18 single site or mainly to one site or a few
19 sites or if primarily to one site then I think
20 there's a real issue of -- of perceived
21 conflict or if -- if that expert is -- would be
22 conflicted if that were a, you know, involved
23 in a site profile involving that site, that
24 same site.

25 So somehow by, you know, saying it's a

1 complex-wide issue it's not clear to me that
2 it's appropriate that that had a lesser --
3 necessarily have a lesser standard. Maybe
4 there are examples where that might be
5 appropriate but to me a lot of the -- I guess I
6 just don't -- I'm skeptical on -- on that and
7 maybe it needs to be better described or
8 defined for that. Anybody else have comments
9 on that or --

10 **DR. ZIEMER:** Yeah, this is Ziemer. I think
11 that in a general sense it probably is logical
12 that it is -- has a -- is kind of a lesser
13 level of concern.

14 However, in specific cases I think one
15 could imagine if you had a complex-wide
16 technical information bulletin on -- and I'm --
17 at a little bit at a loss for an example but
18 may-- maybe there would be a complex-wide one
19 on -- on the use of NTA film for neutron
20 dosimetry let's say. Or -- Or how you, you
21 know, convert the -- the readings for dose rate
22 factors or something. In any event it seems to
23 me that it's possible that a person that
24 authored that would have been a person who had
25 that kind of responsibility on at least one of

1 the sites impacted at some time in the past.

2 The very fact that they're perhaps an
3 expert in that area, it seems to me that would
4 be a -- it wouldn't be surprising that -- but -
5 - but maybe we would need to -- to take a look
6 at what the nature of the complex-wide
7 technical information bulletins, what all --
8 what all is covered there and how -- what the
9 genesis of those are in terms of authorship and
10 so on.

11 **DR. MELIUS:** Correct. I mean --

12 **DR. ZIEMER:** I mean is it a non-issue or is it
13 a moot point or are in fact experts brought in
14 who in fact have done that very job at some one
15 of the affected sites?

16 **DR. MELIUS:** Frankly I don't know what NIOSH's
17 practice is, whether they -- for example I can
18 see a site-specific technical information
19 bulletin that -- which would be covered, would
20 be a key program function as I understand it,
21 but would then be taken and applied to some
22 other sites and so forth which I guess in some
23 ways could raise it's own issues.

24 But at least, you know, for the primary
25 site where it was developed, which I expect

1 would be the one where it was the most
2 important there would be, you know, careful
3 consideration of conflict -- conflict of
4 interest for that so it would be covered here.

5 If these are -- these other ones I mean
6 are complex-wide one is a very generic kind of
7 bulletin then I don't think this would
8 necessarily be as important an issue, it's --
9 in it's application, where it applies and so
10 forth. And I think there at least needs to be
11 some consideration of that in -- in how these
12 are -- are developed and assigned.

13 **DR. WADE:** This is Lew. I mean I do think the
14 intent was these sort of generic documents that
15 really don't -- aren't rooted in any particular
16 site. But I think the clarifications you point
17 out need to be made.

18 **MR. GIBSON:** This is Mike and I respectfully
19 just -- I don't know if I completely agree with
20 everything that's been said because, you know,
21 I've seen, for example, a white paper on high
22 fired oxides and that was only because it came
23 out as an issue first at Mound. And their
24 internal staff took the lead and put out this
25 white paper and these DOE contractors, you

1 know, all the time and a lot of times the rest
2 of the sites just follow the lead of the first
3 person who has the problem. And that may not
4 necessarily be the site with the worst problem.
5 And so --

6 **DR. MELIUS:** You know, that's a good point,
7 Mike.

8 **MR. GIBSON:** You know, I've seen at least two
9 or three examples of that.

10 **DR. MELIUS:** Yeah. And maybe what we need to
11 do is -- I think it's going to be -- the
12 question is going to be the specific bulletin
13 that's being developed.

14 **MR. GIBSON:** Correct.

15 **DR. MELIUS:** And then there needs to be some,
16 you know, judgment as to how that, you know --
17 you know, perceived conflict of interest of the
18 people involved and doing that and how that
19 should be covered under -- how that -- how this
20 conflict of interest should be applied in these
21 instances. And I think we need to, you know,
22 make the comment that -- that we're not
23 completely comfortable with the way it is now,
24 to either, you know, get that clarification
25 from -- from NIOSH and how they define these

1 and how these are done or there needs to be
2 some sort of, you know -- this policy should be
3 modified to include a, you know, a review and a
4 determination as to how it would be handled
5 under this -- this policy of given the
6 background of and where -- where that policy
7 would apply.

8 **MR. GIBSON:** Excuse me. This is Mike again. I
9 think that also gets back to that point about
10 really defining who does the -- the critical
11 assessment of the document --

12 **DR. MELIUS:** Yeah.

13 **MR. GIBSON:** -- because, you know, they -- they
14 can may have well just have learned the
15 approach and adopted it for a site based on
16 someone else's research, and, you know, then it
17 just -- then it's just -- it's not a real
18 transparent -- how deep does that -- that
19 critical reviewer's knowledge go?

20 **DR. MELIUS:** Yeah. Yeah. I will try to -- I
21 will modify comment ten to try to make it more
22 -- capture some of these thoughts also.

23 **MR. GIBSON:** Okay.

24 **DR. MELIUS:** Number eleven referred to section
25 7.2 which is some of the disclosure issues and

1 again there may be some federal rules that
2 cover this. I'm just worried about a overly
3 broad definition of business confidential, the
4 application of that. I guess I was
5 particularly worried because whoever wrote this
6 document put it in quotes. Like if they had
7 said just basically -- had left the quotes off
8 I might have just said well, that's, you know,
9 some sort of good government term and they all
10 know what it means.

11 But just by putting it in quotes I think
12 it implies that there's a fair amount of
13 judgment involved and discretion and I think we
14 need to be careful that we not declare
15 everything so business confidential that it's
16 impossible to -- I mean there is not, you know,
17 adequate disclosure. Again, we're not after
18 somebody's trade secrets or, you know,
19 information that somehow would jeopardize the
20 business. But at the same time it can't be so
21 broad that, you know, no information is
22 provided even though we're, you know -- again
23 the disclosure and the transparency from that
24 disclosure would be helpful to everyone
25 involved. Reaction or comments on that, Paul

1 or --

2 **DR. ZIEMER:** Well, I just assumed that this,
3 you know, we -- we have some documents for
4 example from our contractor that we have
5 redacted for the public meeting where -- where
6 rates are removed and so on. I just assumed
7 that there -- there's kind of a known list of
8 things. I -- I actually wasn't very concerned
9 about this but your -- your concern that there
10 isn't more -- I mean there's some very -- very
11 specific things that you don't disclose. For
12 example, the -- the pay rates or the -- of the
13 -- in other words, they could have the bottom
14 line cost of the contract and they -- they can
15 show -- I think they even show hours of people
16 but they don't show the individual rates and so
17 on.

18 **DR. MELIUS:** Yeah, that -- that --

19 **DR. ZIEMER:** Those things are fairly
20 straightforward. Now, are there -- are there
21 other things that the company says this is a
22 trade secret, do you automatically don't
23 include it? I -- I don't know what -- what
24 would be left out here.

25 **DR. MELIUS:** But there's a process that -- that

1 -- like for trade secrets that the agency would
2 -- would go through that -- even to the extent
3 that they would just define what they mean by
4 trade secret and this is confidential. I think
5 that would be helpful so you would know what's
6 being kept -- kept from you. I mean I can give
7 you -- I can't give you a specific example but
8 I know based on some of the email notifications
9 we used to get about some of the -- ORAU's
10 documents that they were using that were a
11 technical basis, some of the lists of sort of
12 technical information, what they were working
13 on so when I requested it because I thought
14 that it would be helpful for my work as a Board
15 member they -- I got a letter, you know, a note
16 back from them saying, sorry, no, this is all
17 business confidential.

18 **DR. ZIEMER:** Oh, okay.

19 **DR. MELIUS:** And that -- now I didn't pursue it
20 and, you know, I didn't think it was that --
21 that important but I think it does apply to
22 more than just your rate of pay and so forth or
23 can. And again if -- if a better description
24 of both what's included there as well as the
25 process for including it or not --

1 **DR. ZIEMER:** Well, now, let me ask this
2 question. What -- What gets disclosed? They
3 have these conflict of information forms that
4 go in from the contractor employees to NIOSH I
5 guess, right? And we all fill those out. So
6 what is it when these disclosure forms are made
7 publicly available online what -- what gets
8 redacted?

9 **DR. WADE:** Emily, can you answer that?

10 **MS. HOWELL:** Michael just came in. Could you
11 repeat the question for him?

12 **DR. ZIEMER:** Well, it's 7.2 under compliance to
13 the policy. It says the contract officer for
14 each entity performing work under the program
15 will inform the entity of the guidelines, the
16 conflict of interest guidelines. And then the
17 information goes on to say that -- that the
18 employees of the contractor submit their
19 conflict of interest disclosure forms to NIOSH
20 and those are made public. And subject to
21 redaction are trade secrets and business
22 confidential. The question is what is it on
23 those forms that legally -- I mean legally you
24 must redact certain things I guess.

25 And I think -- and Jim, your question

1 sort of revolves around who -- who determines
2 what's redacted and what are the ground rules?
3 Can -- Can the contractor simply say this is
4 all business confidential and you can't tell
5 people what -- what we're submitting or, you
6 know, what -- what's -- what are the ground
7 rules? And you're kind of asking that, Jim,
8 right, in your question? What is it that's
9 business confidential I think is what you're
10 asking.

11 **DR. MELIUS:** Yeah.

12 **DR. ZIEMER:** What does that term mean?

13 **MR. RAFKY:** This is Michael Rafky. I think
14 when we wrote this what we were thinking about
15 was information that you might have to redact
16 due to the Privacy Act as well as information -
17 - when we talked to a number of the contractors
18 in working on this what we considered business
19 confidential were things that somebody
20 mentioned like pay rate specifically of people
21 -- specific individuals -- as well as
22 disclosure of any projects that were -- that
23 they were considering or that they were in the
24 process of bidding for but that information
25 hadn't been made public. And I think those --

1 those were sort of the large category that we
2 would want to redact in terms of these.

3 **DR. ZIEMER:** So when they do a conflict of
4 interest they may tell you, oh, by the way,
5 we're bidding on this contract with XYZ Agency
6 that includes some activities on say this
7 particular site?

8 **MR. RAFKY:** Right. If you look at the --

9 **DR. ZIEMER:** But we don't want anybody to know
10 we're bidding on that because we don't have the
11 contract and it's business confidential. Is
12 that what we're talking about?

13 **MR. RAFKY:** Yes, that's what we're -- that's
14 what we're trying to avoid, that being a
15 factor. Yeah, somebody -- not only is this a
16 process of signing a contract or bidding for
17 work that would cause a conflict. We would
18 want to know that before awarding the contract
19 but you could redact that information from
20 being publicly available because it's something
21 that it's not happened yet and it might reveal
22 sort of internal business or trade secrets of
23 that contractor.

24 **MR. GIBSON:** This is Mike Gibson -- Mike
25 Gibson. If I could ask Michael to just follow

1 up on this. If I understand you right then
2 you're saying overall -- does have a conflict
3 of interest form for corporate conflict --
4 conflict of interest that has never been made
5 public. You guys just they fill it out, you
6 review it. And then you guys determine if it's
7 legitimate trade secret that should be
8 redacted? Is that what I hear you saying?

9 **MR. RAFKY:** Mike, I'm sorry. Right now I can't
10 think of exactly how or what has been redacted
11 in the past. I know that's what we were
12 thinking about with regard to this policy.

13 **MR. GIBSON:** Okay. Has the ORAU COI form for
14 conflict of interest, has it been made public
15 in a blank form even?

16 **MR. RAFKY:** I believe it already -- those are
17 already contained on the website in terms of
18 people -- disclosure forms that are -- have
19 been submitted.

20 **DR. MELIUS:** First let's -- let's clarify
21 something because if I recall the conflict of
22 interest form that's been used in the past and
23 the appendix 2 draft you have here for -- which
24 is for -- really for -- for individuals, I mean
25 I don't see anything on this, the individual

1 form that I mean is trade secret or business
2 confidential. It's just not asking for that
3 type of information. It doesn't ask you how
4 much you earned or, you know, things like that.

5 I mean I just looked through it quickly
6 so maybe I missed something or -- or whatever
7 but -- and so I think we're talking about the
8 corporate form and as Mike is pointing out, we
9 haven't even seen that really. Or we're asking
10 if it's -- we're not sure that we -- we've seen
11 it and we certainly don't have the -- the new
12 corporate form which, you know, might I guess
13 could ask that type of information. And I know
14 you've already seek it out in terms of awarding
15 contracts but --

16 **MR. GIBSON:** Right. This is Mike again. I
17 guess what I'm saying is, is there a clear-cut
18 table that outlines what things are corporate -
19 - what corporate restrictions are or -- you
20 know, I know pay rates are not to be disclosed
21 if they're bidding on work, yada, yada
22 (phonetically). But is there a table that
23 clearly defines or outlines what is supposed to
24 be -- what they want redacted or what --

25 **MR. RAFKY:** No, in this policy so far we've not

1 put together any sort of table or defi-- or
2 specific definition like that yet. We could
3 certainly do that.

4 **THE COURT REPORTER:** Excuse me. Could I get
5 that speaker's name just to be sure, please?

6 **MR. RAFKY:** It's Michael Rafky, R-A, F like in
7 Frank, K-Y.

8 **THE COURT REPORTER:** Right. Thank you.

9 **DR. MELIUS:** I'm glad you're paying attention,
10 Ray.

11 **THE COURT REPORTER:** You're welcome.

12 **MR. GIBSON:** I guess what I'm saying is I would
13 like to see more information on -- on just the
14 definition of -- or how this works. The
15 corporate -- the individual conflicts have been
16 disclosed but not the corporate conflicts or
17 how that's determined.

18 **MR. RAFKY:** Okay.

19 **DR. MELIUS:** I think we're all in agreement on
20 the need for clarification on that.

21 **DR. ZIEMER:** Yeah. Yeah. Just clarify that.
22 What is it that they're talking about here?

23 **DR. MELIUS:** And let me rewrite that --

24 **DR. ZIEMER:** Yeah.

25 **DR. MELIUS:** -- comment so -- so it's a little

1 bit more clear. I just, yeah, couldn't
2 understand what they were even referring to I
3 mean particularly because we, as we said, we
4 didn't really have a corporate form to refer to
5 so in terms of the types of questions and so
6 forth.

7 **DR. ZIEMER:** Yeah.

8 **DR. MELIUS:** And I think there may -- I could
9 see potentially why on that. I just think that
10 in terms of what the -- the public should --
11 the public should understand what's being
12 given, you know, shown to them, available to
13 them and what isn't.

14 **DR. ZIEMER:** Yeah.

15 **MR. GIBSON:** I mean I, you know, I just -- I
16 guess all I'm saying is when I've looked
17 through RFP's for contractors bidding on Mound
18 we've requested their RFP and it -- it'd come
19 back with about 100 pages and there's about ten
20 words on those 100 pages. And it -- it
21 wouldn't even tell what type of equipment
22 they're going to use to do some
23 decontamination. And, you know, once they get
24 the contract and this piece of equipment comes
25 in it's used contract -- it's used complex-wide

1 so, you know, I think more -- just more
2 clarification would be -- be good.

3 **DR. MELIUS:** Yeah. And I think we need
4 reassurances that something's not going to be
5 disclosed at all simply because a small portion
6 of that may involve, you know, some trade
7 secret equipment or something like that that --
8 that, you know, they would still disclose the --
9 -- the relationship with the, you know, DOE site
10 or whatever might be something we might
11 legitimately be concerned about.

12 **DR. ZIEMER:** Yeah, that's what we're concerned
13 about. We --

14 **DR. MELIUS:** Not use business confidential or
15 trade secret to totally --

16 **DR. ZIEMER:** Cover up something else.

17 **DR. MELIUS:** Now again, the level of detail may
18 be affected by that but the -- the majority --
19 in fact the -- the trickiest part is the -- the
20 issue of things they are bidding on or
21 considering bidding on because, you know, on
22 one hand there's a -- we have a legitimate
23 interest in that I think. The -- because it
24 could be a perceived conflict or actual
25 conflict or at the same time, you know, you

1 could understand the business proprietary
2 nature of that also. They don't want a --

3 **DR. ZIEMER:** Right.

4 **DR. MELIUS:** -- competitors to know what
5 they're up to so --

6 **MR. GIBSON:** To my knowledge if it is posted on
7 the web I haven't found it but, you know, it
8 doesn't look like that there's any public
9 disclosures on the web for corporate conflicts
10 of interest for ORAU or -- or their
11 subcontractors.

12 **DR. MELIUS:** No, I don't think it's ever been
13 up there. I'd like to go back. Are there any
14 other, after we've gone through this, any other
15 additional comments the working group thinks we
16 should make, anybody wants to suggest?

17 **DR. ZIEMER:** I -- I have none.

18 **MR. CLAWSON:** This is Brad. At this time I
19 have none.

20 **DR. MELIUS:** Mike?

21 **MR. GIBSON:** Not at this point. I'd like to
22 reserve judgment until once we get another
23 draft of this to maybe further clarify or
24 whatever.

25 **DR. MELIUS:** That's fine. It's open. I don't

1 think we're trying to -- I think what our task
2 as a work group was to -- was to get some
3 comments that would form the basis for the work
4 group's -- or for the Board's discussion. I
5 just remind everybody that we're going to try
6 to reach closure on this issue -- on our
7 comments at the conference call on the 8th.

8 **DR. ZIEMER:** Right.

9 **DR. MELIUS:** So if people have additional
10 comments, you know, topics that aren't covered
11 here that you'd like to add, it would certainly
12 be helpful to put them in, you know, writing in
13 an email to people so that people have those in
14 -- in front of them during -- during the
15 meeting because it's often a lot harder in a
16 conference call Board meeting to write, you
17 know, something that everyone can agree on
18 because not everybody is sitting next to a
19 computer when they're on the call and can get a
20 document. So it would be certainly helpful if
21 we -- people had those ahead of time.

22 **MR. CLAWSON:** Jim, this is -- this is Brad.
23 Now, in all the conversation here we're going
24 to have legal counsel is going to kind of
25 straighten this corporate form out? Is that my

1 understanding that they're going to give us
2 further clarification of this?

3 **DR. MELIUS:** Yeah. I mean I think our comments
4 -- I think what we should try to do at our --
5 the August 8 meeting is set -- is a set of
6 comments on the July 18th draft, you know.
7 We're not approving, you know, a corporate
8 disclosure form that we haven't seen. We're
9 recommending that they develop a separate one.

10 **MR. CLAWSON:** Right. And I understand that. I
11 was just wondering if they were going to get
12 that out to the working group and kind of what
13 -- what kind of a time frame we had.

14 **DR. MELIUS:** I mean to the extent that they can
15 clarify maybe on some of these questions we've
16 asked, or issues at the August 8th meeting.
17 But I don't -- we need to sort of just try to
18 close out on the draft as it stands on July --
19 you know, July 18th, what we had in front of us
20 on July 18th. And then to make our comments
21 now. Things that are maybe presented to us in
22 response to our comments at a later point in
23 time we can review and comment on at a later
24 point in time.

25 **DR. ZIEMER:** Right.

1 **MR. CLAWSON:** Okay.

2 **DR. MELIUS:** And I don't think it should, you
3 know, foreclose any discussions with NIOSH, you
4 know, or NIOSH staff or with Lew, everybody
5 during the conference call but it just -- I do
6 think that we need -- they would like us to
7 give our, you know, general comments and
8 general approvals or disapprovals at -- at that
9 August 8th call so that they can start
10 implementing at least large portions of this --
11 this policy.

12 **DR. ZIEMER:** Right.

13 **DR. MELIUS:** If there are no other comments?
14 Lew, do you have any?

15 **DR. WADE:** No. Just thank you all for your
16 time obviously. And we'll look forward to the
17 discussions on August 8th.

18 **DR. MELIUS:** Okay. Thank everybody.

19 **DR. ZIEMER:** Okay. Thank you.

20 **DR. MELIUS:** Whoever is still listening in,
21 thank you. Okay. 'Bye now.

22 (Whereupon, the working group meeting was
23 adjourned at 3:35 p.m.)
24

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CERTIFICATE OF COURT REPORTER**STATE OF GEORGIA****COUNTY OF FULTON**

I, Steven Ray Green, Certified Merit Court Reporter, do hereby certify that I reported the above and foregoing on the day of July 31, 2006; and it is a true and accurate transcript of the testimony captioned herein.

I further certify that I am neither kin nor counsel to any of the parties herein, nor have any interest in the cause named herein.

WITNESS my hand and official seal this the 4th day of August, 2006.

STEVEN RAY GREEN, CCR**CERTIFIED MERIT COURT REPORTER****CERTIFICATE NUMBER: A-2102**